

**IN THE COURT OF THE CIVIL JUDGE & JMFC, AT  
SIDDAPUR.**

**PRESENT**

**SRI. BHARATH CHANDRA K. S. B.A.LL.B,  
CIVIL JUDGE & JMFC,  
SIDDAPUR.**

**Dated this the 27<sup>th</sup> day of February 2025**

**O.S. No.50-2023**

**Plaintiff: Mahesh Thimma Gouda  
(By shri M R PAdv.)**

**V/s**

**Defendant: Honna Kyasa Gouda and others  
(By shri M G H Adv.)**

**I.A.No.III**

**Applicant : Mahesh Thimma Gouda  
V/s**

**Opponent: Honna Kyasa Gouda and others**

**ORDER ON I.A. No.III**

The plaintiff has filed I.A No.III, U/O 26 Rule 9 of Code of Civil Procedure, 1908, seeking to appoint a court commissioner to conduct local inspection of the suit property and to report with regarding to its actual state of affairs.

**2.** In the affidavit filed in support of I.A. No. III, the plaintiff has stated on oath that, suit schedule properties are betta land left to the use and enjoyment of the privilege holders i.e., the owners of several sy. Numbers. The plaintiff is also the owner of one of the sy number for which the privilege granted. Hence, the plaintiff has been commonly enjoying the suit schedule properties along with other privilege holders. The said betta land can be utilized only for obtaining soil, dry leaves and leaves and other natural fertilizer for the purpose of agriculture. Such being the case the defendant is trying to interfere with the common enjoyment of the suit schedule properties by digging holes to plant arecanut. Therefore, if the defendants plant areca nuts it will affect the common use of the plaintiff. Hence seeks to appoint a court commissioner to report with regarding to the actual stage of affairs. Hence, this application.

**3.** On the other hand, the defendants have filed detailed objections contending that, the plaintiff never availed any benefit from the suit betta land. However the defendants have been enjoying the suit schedule properties along with other privilege holders. The plaintiff has no manner of right, or interest over the suit schedule properties and is intending to encroach the same. Therefore, the defendants seeks the dismissal of the application.

**4)** Upon careful perusal of the application, annexed affidavit and the objections, the following points arise for the consideration of this court:-

**1)** Whether the plaintiff has made out grounds to allow the application for appointing of court commissioner as sought for?

2) What order?

5) Heard the arguments and perused materials on the record.

6) My answer to above points are as under:

Point No.1 – In the **Negative**

Point No.2- As per final order, for the following.

### **REASONS**

**7. Point No.1:** The plaintiff contends that, the defendants are trying to dig up hole to plant areca nut , and if they do so it will affect his common enjoyment, which led to him filing the present suit.

**8.** It is not is the plaintiff case that, the defendants have already dug holes and planted arecanut, it is his only contention that they might do so. The plaintiff has not submitted any reasons as to how or for what purpose would be served if the court commissioner is appointed. Other than the above said plain allegation the plaintiff has not made out any grounds to allow the said application. The court commissioner cannot be appointed in a fanciful manner in every case without it serving any purpose. Hence, this court is of the clear opinion that, the application deserved to be dismissed. Hence this court answer point no. 1 in the Negative.

**9. Point. No. 2:** In view of above discussion and the answer given to Point No.1, this court proceeds to pass the following:

**ORDER**

I.A. No. III filed by the plaintiff, Under Order 26 Rule 9 of Code of Civil Procedure, 1908, is hereby dismissed.

(Dictated to the stenographer directly on the computer, typed by her, corrected by me and then pronounced in the open Court, this 27th day of February 2025)

**(BHARATH CHANDRA K.S.)**  
**CIVIL JUDGE & JMFC,**  
**SIDDAPUR.**

